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Class Counsel

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

DZ Reserve and Cain Maxwell (d/b/a Max
Martialis), *individually and on behalf of
others similarly situated*,

Plaintiffs,

v.

META PLATFORMS, INC.,

Defendant.

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Case No. 3:18-cv-04978-JD

PLAINTIFFS' TRIAL BRIEF

Complaint Filed: August 15, 2018
Trial Date: October 14, 2025
Court: Courtroom 11, 19th Floor
Hon. James Donato

1 **I. INTRODUCTION**

2 Meta Platforms, Inc. (“Meta”), formerly known as Facebook, defrauded its advertisers. As
 3 the Court explained in its class certification order, “The gravamen of the lawsuit is that Meta
 4 inflated its potential advertising reach to consumers and charged artificially high premiums for ad
 5 placements.” ECF No. 388 at 1. Meta engaged in this alleged misconduct between August 15,
 6 2015 and October 27, 2021. ECF Nos. 470 at 2, 471.

7 As internal Meta correspondence shows, Potential Reach was the cornerstone of
 8 Facebook’s ads platform. The Potential Reach metric told advertisers how many people were in
 9 an ad set’s target audience and was displayed to every advertiser on Ads Manager. Advertisers
 10 used Potential Reach to plan, budget and evaluate the performance of their campaigns. This is why,
 11 according to Meta, Potential Reach is “arguably the single most important number in [its] ads
 12 creation interface.”

13 Yet Potential Reach was always expressed as a number of individual “people,” when it was
 14 really accounts—and this discrepancy between people and accounts made the Potential Reach
 15 number inaccurate. ECF No. 388 at 10.

16 Internally senior Meta executives for years acknowledged that Potential Reach was inflated
 17 and misleading. Meta executives also knew its misrepresentations about Potential Reach yielded
 18 significant revenue. When Meta considered implementing a model to reduce Potential Reach
 19 inflation, the successful counterargument was that Meta would suffer a severe negative “revenue
 20 impact.” This prompted the Potential Reach Product Manager to observe, “it’s revenue we should
 21 have never made given the fact it’s based on wrong data.” So Meta continued to hide its fraud.
 22 Executives directed subordinates to conceal the impact of fake or duplicate accounts on Potential
 23 Reach and blocked employees from reducing the inflation or changing the metric to make it less
 24 misleading. When employees suggested changing the disclosures around Potential Reach to make
 25 it clear the metric measured accounts and not people, the Chief Revenue Officer pushed back,
 26 noting that the “people-based narrative” is key to Meta’s value proposition.

27 Meta knew Potential Reach was inflated across the board. Alex Schultz, VP of Analytics,
 28 acknowledged “huge issues. . . with external metrics,” and that “we know our overall ‘people’

1 number has >10% fake accounts and SUMA [duplicate accounts] in it so there must be at least that
 2 much error in our metrics when we tell people the reach of their campaigns.” This is consistent
 3 with Plaintiffs’ expert analysis showing that Potential Reach is inflated for everyone by at least
 4 10%.

5 Meta acknowledged Potential Reach inflation caused all advertisers to spend more money
 6 on ads: “If we overstated how many actual real people we have in certain demos, there is no
 7 question that impacted budget allocations.” And Meta admitted increased advertiser spending
 8 results in higher prices for all advertisers, because when advertisers increase their budgets, “it’s
 9 probable that prices across all impressions will go up for everyone.”

10 Plaintiffs will prove at trial that Meta misrepresented Potential Reach, concealed its fraud,
 11 and that this fraud caused 11 million advertisers to overpay by billions of dollars.

12 **II. PLAINTIFFS’ CLAIMS**

13 **A. Fraudulent Misrepresentation**

14 Under California law, to establish a claim for fraudulent misrepresentation, the Plaintiff
 15 Class must prove, by a preponderance of the evidence, that: (1) Meta represented Potential Reach
 16 to the Plaintiff Class; (2) that representation was false; (3) Meta knew that the representation was
 17 false when Meta made it, or Meta made the representation recklessly and without regard for its
 18 truth; (4) Meta intended that the Plaintiff Class rely on the representation in deciding how much
 19 to spend on advertisements from Meta; (5) the Plaintiff Class reasonably relied on the
 20 representation in deciding how much to spend on advertisements from Meta; (6) the Plaintiff Class
 21 was harmed; and (7) the Plaintiff Class’s reliance on the Meta’s representation was a substantial
 22 factor in causing that harm to the Plaintiff Class. *See* CACI 1900; *see, e.g., Graham v. Bank of*
 23 *Am., N.A.*, 226 Cal. App. 4th 594, 605-06 (2014); *Engalla v. Permanente Med. Grp., Inc.*, 15 Cal.
 24 4th 951, 974 (1997).

25 The evidence at trial will show that that Potential Reach was significantly inflated for all
 26 advertisers because it was not calculated based on people, and that Meta knew that. Statistics expert
 27 Dr. Charles Cowan will testify about the analysis he conducted using the Potential Reach rates of
 28 inflation from Meta’s own documents to determine to a statistical certainty that all Potential Reach

1 was inflated by an average of approximately 50% globally, and roughly 35-50% in the US. Source
 2 code expert Dr. Atif Hashmi will explain that Meta calculated Potential Reach the same way for
 3 all class member advertisers, and that it had deployed to the source code (but failed to activate)
 4 tools that would have filtered out many of the fake and duplicate accounts. Plaintiffs will show
 5 that Meta executives knew for years that Potential Reach was inflated because it counted accounts,
 6 not people.

7 Advertisers were harmed and their reliance on Meta's Potential Reach misrepresentation
 8 was a substantial element in causing that harm. Conjoint expert Dr. Greg Allenby will testify that
 9 his conjoint survey demonstrated that inflated Potential Reach (due to Potential Reach being
 10 calculated based on accounts rather than people) increased the aggregate demand among
 11 advertisers. Auction expert Dr. Timonthy Roughgarden will testify about how that change in
 12 aggregate demand, in turn, increases the price for all advertisers. And economics expert Dr.
 13 Armando Levy will explain the increase in price yields aggregate damages for all advertisers in
 14 the class, while taking supply and demand into account. In short, Plaintiffs will show that Meta's
 15 Potential Reach misrepresentation caused advertisers to overpay for ads in the aggregate, thereby
 16 harming them. Plaintiffs will also show that evidence of Meta's fraud is clear and convincing, such
 17 that punitive damages are warranted under the law. *See* Cal. Civ. Code § 3294; CACI No. 3940.

18 **B. Fraudulent Concealment**

19 Under California law, to establish a claim for fraudulent concealment, Plaintiffs must
 20 prove, by a preponderance of the evidence, that: 1) Meta intentionally failed to disclose that
 21 because the number of unique accounts exceeded the number of unique people, Potential Reach
 22 was inflated, and that this fact was known only to Meta, and Class members could not have
 23 discovered it; 2) Class members did not know Potential Reach was inflated; 3) Meta intended to
 24 deceive Class members by concealing the fact that Potential Reach was inflated; 4) had Potential
 25 Reach inflation been disclosed, Class members reasonably would have behaved differently in deciding
 26 how much to spend on advertisements from Meta; 5) Class members were harmed; and Meta's
 27 concealment was a substantial factor in causing Class members harm. *See* CACI 1901; *see, e.g.,*
 28

1 *Bank of Am. Corp. v. Superior Ct. of L.A. Cnty.*, 198 Cal. App. 4th 862, 870 (2011); *Warner Constr.*
 2 *Corp. v. City of L.A.*, 2 Cal. 3d 285, 294 (1970).

3 Plaintiffs will show that Potential Reach was inflated because it counted accounts instead
 4 of people, through documentary evidence and expert testimony. The evidence will show that at no
 5 point did Meta disclose information from its internal documents that Potential Reach was always
 6 inflated because it counted accounts instead of people. Class representatives will also testify that
 7 they, like other Class members, did not know that Potential Reach was inflated.

8 The evidence will show that Meta intended, and reasonably expected, that Class members
 9 would rely on Meta's false representations about Potential Reach to spend more money on
 10 advertisements from Meta than they otherwise would have. As discussed above, Dr. Allenby's
 11 testimony will show that had Potential Reach inflation (due to Potential Reach being calculated
 12 based on accounts rather than people) been disclosed, Class members would have spent less on
 13 advertisements. Similarly, Plaintiffs will also testify that had they known the truth about Potential
 14 Reach they would have spent less money, if any at all, on Facebook ads. As discussed above, the
 15 evidence will show that Meta's concealment was a substantial factor in causing that harm to the
 16 plaintiff Class. And again, Plaintiffs will show that Meta's fraud was so clear, that punitive
 17 damages are appropriate.

18 **III. DEFENDANTS' DEFENSES**

19 Meta argues that Potential Reach was an estimate and that its fine-print disclosures stating
 20 it was an estimate were sufficient for the Plaintiff Class to know that Potential Reach was filled
 21 with fake and duplicate accounts. The evidence at trial will show otherwise.

22 Relying primarily on the testimony of its marketing professor expert Dr. Catherine Tucker,
 23 Meta contends Class representatives and the Class did not rely on Potential Reach to set their
 24 budgets. It also points to isolated data points from the class representatives' ad purchases in an
 25 attempt to show a lack of reliance. The evidence at trial, including the class representatives'
 26 testimony and expert testimony, will prove otherwise.

27 Meta argues that there was no harm to the Plaintiff Class because they only paid for the
 28 ads that ran, based on clicks or impressions—not on Potential Reach. Plaintiffs will show that

Potential Reach was inflated because it counted accounts instead of people, thus raising the ad prices for all advertisers and harming all Class Members.

Finally, Meta seeks a jury instruction on the affirmative defense of unclean hands as to Plaintiff DZ Reserve on the grounds that it allegedly “violated Meta’s Terms of Use by purchasing advertisements through others’ accounts.” This defense is unavailing. “To establish unclean hands, a defendant must demonstrate (1) inequitable conduct by the plaintiff; (2) that the plaintiff’s conduct directly relates to the claim which it has asserted against the defendant; and (3) plaintiff’s conduct injured the defendant.” *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 518 F. Supp. 2d 1197, 1223 (C.D. Cal. 2007) (internal citation omitted). Meta can satisfy none of these elements. First, DZ Reserve’s alleged purchase of advertisements is not conduct courts have held can support a defense of unclean hands. Second, there is no relationship between a customer’s purchase of advertisements and the fraudulent misrepresentations for which Meta stands trial. Third, Meta was not injured by the alleged purchase of advertisements on its platforms; to the contrary, Meta profited from it.

IV. CONCLUSION

The evidence at trial will show that judgment should be entered for Plaintiffs on all their claims and that compensatory and punitive damages are warranted.

Dated: September 4, 2025

Respectfully Submitted,

By /s/ Geoffrey Graber

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